

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
Title 3, California Code of Regulations  
Section 3406(b), Mediterranean Fruit Fly Interior Quarantine  
INITIAL STATEMENT OF REASONS/  
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3406(b) is to provide for the State to regulate the movement and possible carriers of Mediterranean fruit fly (Medfly) from the area under quarantine to prevent the artificial spread of the Medfly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3406(b) was necessary is as follows:

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Mediterranean fruit flies were recently detected in the County of Santa Clara. On September 18, 2007, an adult female Mediterranean fruit fly was taken from a trap in the San Jose area of Santa Clara County. On October 10, 2007, adult female and male Mediterranean fruit flies were taken from traps located at two separate residences in the San Jose area of Santa Clara County. The detection of five adult Mediterranean fruit flies is indicative of an incipient infestation of the fly in the San Jose area of Santa Clara County.

The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for a quarantine response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The proposed quarantine area for the San Jose area includes the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Santa Clara County Agricultural Commissioner. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Mediterranean fruit fly to noninfested areas.

The Mediterranean fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated.

Although adoption of specific regulatory authority can be the beginning of a project and

therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

This amendment established a quarantine area in Santa Clara County of approximately 75 square miles surrounding the Mediterranean fruit fly infestation in the San Jose area of Santa Clara County. To prevent artificial spread of the fly to noninfested areas to protect the California's agricultural industry, it is necessary immediately to regulate movement of hosts which can carry the fly within and from the infested area and surrounding buffer zone. Therefore, it was necessary to amend Section 3406(b) on an emergency basis.

#### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioner of Santa Clara County requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's

determination that this action will not have a significant adverse economic impact on businesses was based on the following:

No business has gone out of business due to any Medfly quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Medfly expenditures by State and Federal governments.

There are no known organic growers. The Department has identified approximately five conventional growers within the quarantine area. Host fruit from growers outside the core area (a one mile area surrounding the infested sites) may be treated with Malathion or Spinosad bait spray before it can be moved. The ground application Malathion spray costs are approximately \$5 per acre for product with approximately 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense.

Within the quarantine area, the Department has identified 158 fruit sellers/vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to Medfly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

There are 22 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra

material for landfill disposal does not add appreciably to their existing disposal costs.

The Department has identified approximately four farmers' markets/swap meets in the area under quarantine. Businesses selling host produce at these locations must maintain the quarantine commodities in a manner that precludes exposure to Medfly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

Within the quarantine area, the Department has identified two yard maintenance businesses that must safeguard all host fruit being removed from properties within the quarantine area by placing it in plastic bags for disposal at a landfill. The plastic bags are inexpensive and there is no extra material for disposal at a landfill, as it would have been removed anyway.

The Department has determined there is one processor located within the regulated area. Any cull fruit or unprocessed host material must be safeguarded until it is properly disposed of. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive.

Based on the above information, it was determined that the amendment of Section 3406(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low.

### Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing

businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3606(b):

“Annual Estimated Economic Impact-First Expansion, San Jose Area, Santa Clara County, Mediterranean Fruit Fly Interior Quarantine,” dated December 14, 2007, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

“Establishments Affected by the Mediterranean Fruit Fly Interior Quarantine, San Jose Area, Santa Clara County,” dated December 14, 2007, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

Email dated December 11, 2007, from Casey Estep to Stephen Brown and its attachments.

“Annual Estimated Fruit Fly Quarantine Costs,” dated November 26, 2007, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

Letter dated October 11, 2007, to A.G. Kawamura, Secretary, from Greg Van Wassenhove, Santa Clara County Agricultural Commissioner.

“Pest and Damage Record #1475731,” dated October 10, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1475731,” dated October 10, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1475729,” dated October 10, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #13789573,” dated September 18, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Mediterranean Fruit Fly Action Plan,” dated December, 2003, United States Department of Agriculture, Plant Protection and Quarantine.